Frank E. Laviero Co., Inc./Alled Corporation *and* Plumbers and Pipefitters Local 39, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO *and* United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO, Plumbers Local No. 305 *and* Plumbers and Steamfitters Local 84, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO. Cases 34–CA–4996, 34–CA–5032, and 34–CA–5106

September 30, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

Upon a charge filed by Plumbers Local 39 on November 30, 1990,[1] as amended December 27, in Case 34–CA–4996, the General Counsel of the National Labor Relations Board issued a complaint on March 29, 1991, against Frank E. Laviero Co., Inc./Alled Corporation, the Respondent, alleging that it has violated Section 8(a)(5), (3), and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

Upon a charge filed by Plumbers Local 305 on January 3, 1991, as amended on March 29, 1991, in Case 34–CA–5032, the General Counsel of the National Labor Relations Board issued a complaint on March 29, 1991, against the Respondent, alleging that it has violated Section 8(a)(5), (3), and (1) of the National Labor Relations Act. Although properly served with copies of the charge, amended charge, and complaint,[2] the Respondent has failed to file an answer.

Upon a charge filed by Plumbers Local 84 on February 25, 1991, in Case 34–CA–5106, the General Counsel of the National Labor Relations Board issued a complaint on April 8, 1991, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served with copies of the charge and complaint, the Respondent has failed to file an answer.

On May 3, 1991, the General Counsel issued an order further consolidating cases in Cases 34–CA–4996, 34–CA–5032, and 34–CA–5106. Although properly served with copies of the order, the Respondent has filed no response.

On May 24, 1991, the General Counsel filed a Motion for Summary Judgment. On May 31, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by letters dated April 22 and 29, 1991, notified the Respondent that unless an answer was received by April 29 and May 6, 1991, respectively, a Motion for Summary Judgment would be filed. A letter dated April 30, 1991, was received by the Regional Office of Region 34. It was written on the Respondent's letterhead, and had that name typewritten in the signature area. However, it bore no signature. It stated that on March 28, 1991, the Union had the Respondent shut down in a hearing. It also stated that on April 8, 1991, Frank Laviero passed away.

In the absence of good cause being shown for the failure to file a timely answer,[3] we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Frank E. Laviero Co., Inc. and Alled Corporation, collectively the Respondent, Connecticut corporations with an office and place of business in Plainville, Connecticut, have been engaged as a mechanical contractor

[1] All subsequent dates are in 1990 unless otherwise noted.

[2] The charge, amended charge, and complaint were sent by certified mail to the Respondent's business address, but Region 34 received from the United States Postal Service copies of the postal service return receipts only with respect to the amended charge and complaint.

[3] The April 30, 1991 letter does not constitute a timely answer because it does not specifically admit, deny, or explain each of the allegations in the complaints. See Sec. 102.20 of the Board's Rules and Regulations. We also note that the letter alleged cessation of operations and the death of Frank Laviero. Even if ture, these allegations would not change the outcome of this proceeding. Cessation of operations does not constitute a valid defense to the allegations here. See *Pimlico Elder Care*, 296 NLRB 1086 (1989). Furthermore, Respondent Frank Laviero Co., Inc. is incorporated and therefore survives the death of any individual.

providing plumbing and pipefitting services in the building and construction industry. During the 12-month period ending March 31, 1991, in the course and conduct of its business operations, the Respondent provided services valued in excess of $50,000 to general contractors in the building and construction industry, including R. W. Granger and Sons, Inc., who are directly engaged in interstate commerce. During the 12-month period ending March 31, 1991, R. W. Granger and Sons, Inc., a Massachusetts corporation, in the course and conduct of its business operations performed services valued in excess of $50,000 in States other than the State of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Single Employer*

Respondent Laviero and Respondent Alled have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of these operations; have shared common premises, facilities, and equipment; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise. By virtue of the operations described above, Respondent Laviero and Respondent Alled constitute a single integrated business enterprise and a single employer within the meaning of the Act.

B. *The Representative Status of the Unions*

1. Local 39

On or about July 28, 1988, Respondent Laviero entered into an acceptance agreement to be bound to the collective-bargaining agreement between Local 39 and the Central Mechanical Contractors Association, Inc., which was effective by its terms for the period August 1, 1987, to July 31, 1990 (the Central Association Agreement). The collective-bargaining agreement provided, inter alia, for the recognition of Local 39 as the exclusive representative of Respondent Laviero's employees in a unit described in article I, sections 1 and 2; article II, section 1; and article III, section 1[4] The employees of the Respondent in the unit constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. About July 31, 1990, Respondent Laviero entered into an interim agreement with Local 39 to be bound by any contract negotiated between the Central Association and Local 39. About September 8, Local 39 and the Central Association executed a collective-bargaining agreement effective by its terms for the period August 1, 1990, through July 31, 1995 (the Central Association Agreement). Respondent Laviero recognized Local 39 without regard to the majority status of Local 39 under Section 9(a) of the Act. At all material times since July 28, 1988, by virtue of Section 8(f), Local 39 has been the limited exclusive collective-bargaining representative of the unit (the Central Unit).[5]

2. Local 305

About August 24, 1990, Respondent Laviero entered into an acceptance agreement adopting the collective-bargaining agreement between Local 305 and the Eastern Connecticut Mechanical Contractors Association, effective by its terms for the period August 1, 1989, to July 31, 1991 (the Eastern Association Agreement). The collective-bargaining agreement, inter alia, provides for the recognition of Local 305 as the exclusive representative of Respondent Laviero's employees in a unit described in article I[6] The employees of the Respondent in the unit constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Respondent Laviero granted recognition to Local 305 as described above without regard to the majority status of Local 305 under Section 9(a) of the Act. At all material times since August 24, by virtue of Section 8(f), Local 305 has been the limited exclusive collective-bargaining representative of the unit (the Eastern unit).[7]

3. Local 84

About August 8, 1990, Respondent Laviero entered into an acceptance agreement with Local 84 to be bound by the terms of the collective-bargaining agreement between Plumbers Local 76 and the Hartford Mechanical Contractors Association, Inc. for the period July 1, 1989, through June 30, 1991 (the Hartford Association Agreement). The collective-bargaining agree-

[4] The description of this bargaining unit is not otherwise identified in the record.

[5] Although the complaint alleges that Local 39 is the exclusive representative of the unit employees by virtue of Sec. 9(a), it is clear, based on both the complaint allegation that the Respondent granted recognition to the Union without regard to majority status and the complaint allegation limiting 9(a) status to the duration of the applicable contracts, that the Respondent and Local 39 have established an 8(f) relationship. Under the principles of *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), an 8(f) signatory union does not acquire full 9(a) status based solely on an employer's adoption of an 8(f) agreement. Accordingly, we find that Local 39 is the limited exclusive representative of the Respondent's unit employees. Id. at 1386–1387.

[6] The description of this bargaining unit is not otherwise identified in the record.

[7] See fn. 5, above.

ment, inter alia, provides for the recognition of Plumbers Local 76 as the exclusive representative of Respondent Laviero's employees in a unit described in article I[8] Since about March 1, 1990, Local 84 has been the successor of Plumbers Local 76[9] The employees of the Respondent in the unit constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Respondent Laviero granted recognition to Local 84 without regard to the majority status of Local 84 under the provisions of Section 9(a) of the Act. At all material times since August 8, by virtue of Section 8(f), Local 84 has been the limited exclusive collective-bargaining representative of the unit (the Hartford Unit).[10]

C. *Refusal to Comply with the Contracts*

1. Local 39

Since about October 29, 1990, the Respondent has failed to continue in full force and effect all the terms and conditions of the Central Association Agreement. The terms and conditions of the agreement that the Respondent failed to continue in full force and effect are terms and conditions of employment of employees in the Central Unit, and are mandatory subjects of bargaining. The Respondent engaged in this conduct without either the consent of or prior notice to Local 39, and without having afforded Local 39 an opportunity to bargain as the exclusive representative of the Respondent's employees in the Central Unit.

We find that by this conduct the Respondent has refused to bargain in violation of Section 8(a)(5) and (1) of the Act.

2. Local 305

Since about December 12, 1990, with respect to unit employees employed at the Connecticut Department of Transportation Garage jobsite in Old Saybrook, Connecticut, and since about December 29, with respect to unit employees employed at the Niantic State Prison jobsite in Niantic, Connecticut, the Respondent has abrogated and refused to abide by the Eastern Association Agreement. The terms and conditions of the agreement that the Respondent failed to continue in full force and effect are terms and conditions of employment of employees in the Eastern Unit, and are mandatory subjects of bargaining. The Respondent engaged in this conduct without either the consent of or prior notice to Local 305, and without having afforded Local 305 an opportunity to bargain as the exclusive representative of the Respondent's employees in the Eastern Unit.

We find that by this conduct the Respondent has refused to bargain in violation of Section 8(a)(5) and (1) of the Act.

3. Local 84

Since about September 1, 1990, the Respondent has failed to continue in full force and effect all the terms and conditions of the Hartford Association Agreement by failing to make the required benefit contributions set forth in articles XVII, XVIII, and XIX of that agreement. The terms and conditions of the agreement the Respondent failed to continue in full force and effect are terms and conditions of employment of employees in the Hartford Unit, and are mandatory subjects of bargaining. The Respondent engaged in this conduct without either the consent of or prior notice to Local 84, and without having afforded Local 84 an opportunity to bargain as the exclusive representative of the Respondent's employees in the Hartford Unit.

We find that by this conduct the Respondent has refused to bargain in violation of Section 8(a)(5) and (1) of the Act.

D. *Termination of Employees*

1. Local 39

Since about October 29, 1990, certain employees of the Respondent in the Central Unit ceased work concertedly and engaged in a strike. The strike was caused and prolonged by the unfair labor practices committed by Respondent Laviero, which are set forth in the Board's Decision and Order at 295 NLRB No. 13 (June 15, 1989). About December 6, 1990, Local 39, on behalf of all employees who engaged in the strike, made unconditional offers for these employees to return to their former positions of employment. Since about December 6, the Respondent has failed and refused to reinstate to their former positions of employment the following named employees who engaged in the strike:

Anthony Chaplinsky	Leonard Muselli
Ray Dokas	Philipp Ritzzuto
Francis Esposito	Edward Rubano
Fredrick Fusolo	George Wagner
Dominick Perrotti	John Wirtes

Since about December 10, the Respondent has failed and refused to reinstate as a group the employees referred to above and has, instead, made individual offers of reinstatement to certain employees. The employees who have been offered reinstatement on an individual basis have rejected those offers and continued the strike. The Respondent engaged in this conduct because the employees engaged in the strike and because they joined, supported, or assisted Local 39, and engaged in concerted activities for the purposes of collec-

[8] The specific description of this bargaining unit is not otherwise identified in the record.

[9] Local 84 derived from a merger of Plumbers Local 76 and Plumbers Local 218.

[10] See fn. 5, above.

tive bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities.

We find that the Respondent's failure to reinstate the strikers, as described above, violated Section 8(a)(3) and (1) of the Act.

2. Local 305

About December 13, 1990, the Respondent terminated its employees Joseph Besabe, Lee Cone, and Troy Chick. About December 29, the Respondent terminated employees George Andrews and Lee Whipple. The Respondent engaged in this conduct because these employees joined, supported, or assisted Local 305 and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities.

We find that the Respondent terminated those employees in violation of Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. By the acts described in section II,(C), the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and thereby the Respondent has been engaging in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and 8(d) of the Act.

2. By the acts and conduct described in section II,(D), the Respondent has discriminated, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby the Respondent has been engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

3. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make all contractually required payments owing (1) under the agreement with Local 39 since about October 29, 1990; (2) under the agreement with Local 305 since about December 29, 1990; (3) under the agreement with Local 84 since about September 1, 1990.[11] We shall also order the Respondent to make whole unit employees for any losses they suffered by the Respondent's failure to abide by the terms and conditions of its collective-bargaining agreements with each of the Unions as indicated above. The monetary amounts are to be computed in accordance with the Board's decisions in *Ogle Protection Service*, 183 NLRB 682 (1970), and *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest to be computed the in manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We have found that the Respondent unlawfully refused to reinstate Anthony Chaplinsky, Ray Dokas, Francis Esposito, Fredrick Fusolo, Dominick Perrotti, Leonard Muselli, Philipp Rizzuto, Edward Rubano, George Wagner, and John Wirtes.[12] We have also found that it unlawfully discharged Joseph Besabe, Lee Cone, Troy Chick, George Andrews, and Lee Whipple. Therefore we shall order the Respondent to offer full and immediate reinstatement to the above-named employees, and further order that they be made whole for any loss of earnings or other benefits they may have suffered as a result of the discrimination against them, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and with interest as computed in *New Horizons for the Retarded*, supra.

Finally, we shall order the Respondent to remove from its files any record of the above-described disciplinary action taken against the individual employees named above, and to notify those individuals, in writing, that this action has been taken and that evidence of the disciplinary action found unlawful will not be used against them in any way, in accordance with *Sterling Sugars*, 261 NLRB 472 (1982).

ORDER

The National Labor Relations Board orders that the Respondent, Frank E. Laviero Co., Inc./Alled Corp., Plainville, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Plumbers and Pipefitters Local 39, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO, by refusing since October 29, 1990, to comply with the terms of the collective-bargaining agreement with that Union effective from August 1, 1990, to July 31, 1995.

[11] Any additional amounts owed with respect to these benefit contributions shall be calculated in the manner set forth in *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979).

[12] The undisputed complaint allegations reveal that the Respondent's piecemeal offers of reinstatement to former strikers were made in retaliation for their protected activity, and thus did not toll the remedy for employees offered the piecemeal reinstatement. See *My Store, Inc*., 181 NLRB 321 (1970), enfd. in pertinent part 468 F.2d 1146 (7th Cir. 1972).

(b) Refusing to bargain collectively with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO, Plumbers Local No. 305, by refusing since December 12, 1990, regarding the unit employees employed at the Connecticut Department of Transportation Garage jobsite in Old Saybrook, and since December 29, 1990, regarding unit employees employed at the Niantic State Prison jobsite, to comply with the terms of the collective-bargaining agreement with that Union effective from August 1, 1989, to July 31, 1991.

(c) Refusing to bargain collectively with the Plumbers and Steamfitters Local 84, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO, by refusing since September 1, 1990, to comply with the terms of the collective-bargaining agreement with that Union effective from July 1, 1989, to June 30, 1991.

(d) Refusing to reinstate previously striking employees because they had engaged in union activities or other protected concerted activities.

(e) Discharging employees because they engaged in union activities or other protected concerted activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit in accordance with the terms and conditions of each of the collective-bargaining agreements, the required funds which were withheld since the dates specified for each of the Unions, and make the employees and the funds whole in the manner set forth in the remedy section of this decision.

(b) Offer Anthony Chaplinsky, Ray Dokas, Francis Esposito, Fredrick Fusolo, Dominick Perrotti, Leonard Muselli, Philipp Rizzuto, Edward Rubano, George Wagner, John Wirtes, Joseph Besabe, Lee Cone, Troy Chick, George Andrews, and Lee Whipple immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Remove from its files any reference to the unlawful discharges or failures to reinstate these employees and notify them in writing that this has been done and that it will not use evidence of the failure to reinstate or the discharges against them in any way.

(d) Preserve and, on request, make available to the Board and its agents for examining and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Plainville, Connecticut, in the event it is still operating, copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Sufficient signed copies of the notice shall be furnished to the Regional Director for posting by the Connecticut Department of Transportation, the Niantic State Prison, and the Unions affected, those entities willing.

(f) In the event the Plainville facility is closed, take the following action. Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt to the last known address of each of the employees in the three units who were employed by the Respondent during the periods in which the unlawful conduct occurred.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with the Plumbers and Pipefitters Local 39, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting industry of the United States and Canada, AFL–CIO, by refusing since October 29, 1990, to comply with the terms of the collective bargaining agreement with that Union effective from August 1, 1990, to July 31, 1995.

WE WILL NOT refuse to bargain collectively with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO, Plumbers Local 305, by refusing since December 12, 1990, regarding our employees employed at the Connecticut Department of Transportation Garage jobsite in Old Saybrook, and since December 29, 1990, regarding our employees employed at the Niantic State Prison jobsite, to comply with the terms of our collective bargaining agreement with that Union effective from August 1, 1989, to July 31, 1991.

WE WILL NOT refuse to bargain collectively with the the Plumbers and Steamfitters Local 84, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO by refusing since September 1, 1990, to comply with the terms of the collective-bargaining agreement with that Union effective from July 1, 1989, to June 30, 1991.

WE WILL NOT refuse to reinstate previously striking employees because they engaged in union or other protected concerted activities.

WE WILL NOT discharge employees for engaging in union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit in accordance with the terms and conditions of each of the collective-bargaining agreements, the required funds which were withheld since the dates specified for each of the Unions, and make the employees and the funds whole for any losses they incurred as a result of our failure to abide the terms and conditions of each of the collective-bargaining agreements.

WE WILL offer Anthony Chaplinsky, Ray Dokas, Francis Esposito, Fredrick Fusolo, Dominick Perrotti, Leonard Muselli, Philipp Rizzuto, Edward Rubano, George Wagner, John Wirtes, Joseph Besabe, Lee Cone, Troy Chick, George Andrews, and Lee Whipple immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the unlawful discharges or failures to reinstate these employees and WE WILL notify them in writing that this has been done and that evidence of the failure to reinstate or the discharges will not be used against them in any way.

FRANK E. LAVIERO CO., INC./ALLED CORPORATION